



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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OCT 13 2009

Ms. Elizabeth Holland
Environmental Resources Branch
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, 10th Floor
Sacramento, California 95814-2922

Subject: Draft Environmental Impact Statement (DEIS) Natomas Levee
Improvement Program Phase 4a Landside Improvements Project
(CEQ# 20090298)

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

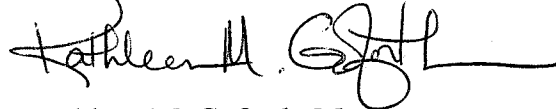
EPA's primary concern is that the DEIS analysis of conformity applicability shows mitigated nitrogen oxide (NO_x) emissions exceeding the conformity threshold. Prior to completing the Final EIS, the Corps should either revise the project so that the emissions no longer exceed the threshold, or complete a conformity determination for the project. Whichever the case, EPA is ready to coordinate with the Corps to avoid project delays. To clarify a point of apparent confusion, off-site mitigation (or offsets) may be included in a conformity determination, but may not be considered in an analysis to determine the applicability of conformity.

We are pleased to learn of the cooperation of the Corps and the Sacramento Area Flood Control Agency (SAFCA) with the US Fish and Wildlife Service, California Department of Fish and Game, and the Natomas Basin Conservancy to ensure this project and future development adhere to, and do not undermine, the underlying assumptions, goals, and objectives of the Natomas Basin Habitat Conservation Plan.

While we acknowledge the urgent need for the levee improvements and the benefits of the Proposed Action, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "*Summary of Rating Definitions*") due to our concerns regarding the conformity analysis, described above, and the management of the residual flood risk, discussed in our enclosed detailed comments.

We appreciate the opportunity to review this DEIS. When the FEIS is released for public review, please send one hard copy and one CD ROM to the address above (mail code: CED-2). If you have any questions, please contact Tom Kelly, the lead reviewer for this project, at (415) 972-3856 or kelly.thomasp@epa.gov, or me at (415) 972-3521.

Sincerely,



Kathleen M. Goforth, Manager
Environmental Review Office

Enclosures:

Summary of EPA Rating Definitions

Detailed Comments

cc: Ken Sanchez, U.S. Fish and wildlife Service
Robert Solecki, Central Valley RWQCB
Jeff Drongesen, California Department of Fish and Game
John Bassett, Sacramento Area Flood Control Agency
Helen Thomson, Sacramento Area Council of Governments
Larry Greene, Sacramento Metropolitan Air Quality Management District
David A. Valler Jr., Feather River Air Quality Management District
John Roberts, The Natomas Basin Conservancy

EPA'S DETAILED DEIS COMMENTS ON DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) NATOMAS LEVEE IMPROVEMENT PHASE 4A LANDSIDE IMPROVEMENTS PROJECT (CEQ# 20090298) SACRAMENTO AND SUTTER COUNTY, CA, OCTOBER 13, 2009

Incorporate Residual Flood Risk into Land Use Planning

In our letters on earlier phases of this project, dated August 4, 2008 and April 3, 2009, respectively, we raised concerns about residual flood risk to future development in a floodplain protected by the project's improved levees. The Corps responded in the Final EISs, dated November 14, 2008 and August 21, 2009, by describing county flood safety plans and Sacramento Area Flood Control Agency (SAFCA) development impact fees to avoid any substantial increase in the expected damage due to an uncontrolled flood. While we are pleased to learn of these steps, we remained concerned.

In 1995, the National Research Council published "Flood Risk Management and the American River Basin; an Evaluation." After acknowledging that specific improvements were planned or foreseeable to alleviate flood risk, the report suggested, "[d]evelopment within the Natomas Basin thus should be subject to prudent flood-plain management requirements under *federal*, state and local authority" (emphasis added). We concur and suggest the Corps take a more active role to ensure adequate safeguards are in place to manage the area's residual risk.

As the National Research Council report noted, the risk of flooding over a 50 year period, even for systems designed to withstand 200-year flood, is 22% or 1 in 5. It also stated, "[p]erhaps the worst thing that might be done is to create a false sense of security or to encourage people to think that any proposed project provides complete protection from flooding."

EPA is not opposed to development in the Natomas Basin. Development close to urban centers is a tenet of EPA's Smart Growth Program, but such development must adequately address residual flood risk. Section 2.5.1 of the DEIS contains many prudent measures to manage residual risk, including some land use planning measures. EPA suggests the Corps consider additional measures, contained in the SAFCA white paper titled, "Legislative Framework for Flood Control Flood Risk Management in the Sacramento Valley (Endorsed by SACOG [Sacramento Area Council of Governments] – 4/20/06)." As SAFCA acknowledges, many measures are beyond their authority to implement. EPA notes that the Corps brought this document to our attention in the previously mentioned responses to comments.

Recommendation:

The Corps should request local implementation of land use controls suggested in the white paper, or suitable alternatives. EPA noted the following land use measures from the white paper, which were not discussed in the DEIS:

- require property owners to obtain flood insurance (page 2 and 7)
- ensure that occupants of areas protected by levees have adequate notice or disclosure about the risk of flooding (page 6)
- outline a comprehensive flood risk management program that promotes appropriate land use planning (page 9),
- design urbanizing areas to ensure that there is no net increase in the peak flow of stormwater (e.g. low impact development, see <http://www.epa.gov/nps/lid/>) discharged from the floodplain (page 5).

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.